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| 10/621,960 | 07/17/2003 | David A. Branscomb | B536-003-PAT | 2043 |
| 7590 | 06/25/2004 | | EXAMINER | |
| Angenehm Law Firm. Ltd. P.O. Box 48755 Coon Rapids, MN 55448-0755 | | | D ADAMO, STEPHEN D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3636 | |

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,960

Applicant(s)

BRANSCOMB, DAVID A.

Examiner

Stephen D'Adamo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 5-9 and 15 is/are rejected.
- 7) ☒ Claim(s) 2-4, 10-14 and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/18/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claim 1-16, drawn to a snowmobile seat, classified in class 297, subclass 195.12.
 - II. Claims 17-20, drawn to a method, classified in class 297, subclass 463.2.
2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the method, as claimed, can be used to make another materially different product such as a motorcycle seat.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Paul Fredericks on 16 June 2004 a provisional election was made with traverse to prosecute the invention of the snowmobile seat, claims 1-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of flexible supports and the plurality of foam overlays must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 2-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites a “fabric overlay” wherein the remaining claims refer to a “foam overlay”. Therefore, the cited feature, “foam overlay” in claims 11-15 lack proper antecedent basis. As it is understood by the examiner, the “fabric overlay” cited in claim 2 is the same feature as the “foam overlay” cited in claims 11-15. Appropriate correction is needed for clarification.

Regarding claims 7-9 and 15, the plurality of foam overlays and flexible supports are confusing since the examiner is unclear whether the supports and overlays are in direct contact with each other, separated, alternating, etc. Since the drawings fail to show these features, the claims are indefinite.

Regarding claim 2, line 3 recites “the flexible supported being bowed...” The term “supported” should be changed to “support”.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2, 3, 4, 10, 11, 12, 14, 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Losio et al. (6,629,728).

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Losio discloses a supports structure for a vehicle comprising a base or support frame (“not shown [in the drawings] because it is of the same type as the prior art” col.3, lines 41-42), a flexible support or shell 2 and a fabric overlay 3 covers the flexible support. The flexible support, as disclosed in Figure 1-9, is bowed to form a spring. “in one preferred embodiment of the invention, the frame 2 of the saddle 1 is created by means of a plurality of ribs 2’ which are connected to one another and simultaneously for a flexible, but rigid, lightweight framework. This structure enables the saddle to flex during use” (col.3, lines 56-61). Selective fasteners or fastening means 5 mount to the base or support frame that is not shown but disclosed. The fasteners 5 include inner posts (seen below) and offset outer posts on a first side of the base and on a second side of the base. The ribs 2’ or curved supports in the shell 2 define relief apertures, thus creating a lightweight flexible framework, as noted above.

Regarding claims 11, 12 and 14, the claims do not impart any additional structural limitations and are given little patentable weight. The functional statements can be accomplished with the structure of Losio, as claimed. Since the shell 2 includes apertures between the plurality of ribs 2’, the foam overlay is squeezed and the moisture is “rung out” when a user sits on the padding 3 and fabric covering.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Losio et al. (6,629,728).

Losio discloses a supports structure for a vehicle comprising a base or support frame ("not shown [in the drawings] because it is of the same type as the prior art" col.3, lines 41-42), a flexible support or shell 2 and a fabric overlay 3 covers the flexible support. However, Losio does not expressly disclose the foam overlay to have a thickness between one and two inches. However, whether the padding is less than one inch or greater than two inches is considered a matter of engineering design choice, since it is inherent to reduce the vehicle seat by minimizing material.

Allowable Subject Matter

10. Claim 1 is allowed.
11. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
12. Claims 7-9 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schwochert et al. (6,739,655), House et al. (5,735,2290, Tani

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(5,353,734), Haslim (4,736,932), Rich, Jr. (3,588,171), Schaffner (2,316,628), Lamplugh (1,916,056) and Hirahara (JP 6,315,421) all show various features of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173. The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SD

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June 21, 2004


Peter M. Cuomo
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